

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 11-19-03 Item: 3.f.
		File Number CP 03-058
STAFF REPORT		Application Type Conditional Use Permit
		Council District 4
		Planning Area North San José
		Assessor's Parcel Number(s) 237-22-065
PROJECT DESCRIPTION		Completed by: Mike Mena
Location: On the eastside of North 1st Street approximately 500 feet southerly of Component Drive.		
Gross Acreage: 5.63	Net Acreage: 5.63	Net Density: N/A
Existing Zoning: IP Industrial Park	Existing Use: Vacant Office Building	
Proposed Zoning: No change	Proposed Use: Communications use (TV/Broadcasting KNTV), installation of seven satellite dishes, construct a 69 foot microwave/communications antenna tower and the installation of one 746 Hp backup generator and associated 6,000 gallon above ground fuel tank on a 5.63 gross acre site	
GENERAL PLAN		Completed by: Mike Mena
Land Use/Transportation Diagram Designation IP Industrial Park		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		Completed by: MM
North: Office	IP Industrial Park	
East: Industrial, warehouse	IP Industrial Park	
South: Office	IP Industrial Park	
West: Vacant, Research and Development	IP Industrial Park	
ENVIRONMENTAL STATUS		Completed by: MM
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY		Completed by: MM
Annexation Title: Orchard No. 75		Date: August 2, 1977
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____ <input type="checkbox"/> _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

APPLICANT	DEVELOPER	OWNER
H. Delaney Young, Jr. NBC 11, KNTV Television 645 Park Avenue San José, CA 95110	Linda Sullivan NBC 11, KNTV Television 645 Park Avenue San José, CA 95110	EJM Development Co./Jerry Monkarsh 9061 Santa Monica Blvd. Los Angeles, CA 90069
PUBLIC AGENCY COMMENTS RECEIVED		Completed by: MM
Department of Public Works		
See attached memorandum and conditions		
Other Departments and Agencies		
San José Fire Department		
GENERAL CORRESPONDENCE		
None received		
ANALYSIS AND RECOMMENDATIONS		

BACKGROUND

The applicant, NBC 11/KNTV Television, is requesting a Conditional Use Permit to allow a change in use of an existing office building for a television broadcasting studio, the construction of a 69 foot microwave/communications antenna tower, exterior building alterations and the installation of one 746 Hp backup generator and associated 500 gallon above ground fuel tank on a 5.63 gross acre site. The Zoning Ordinance requires a Conditional Use Permit for television studio uses in the IP Industrial Park Zoning District.

The site consists of an existing office development located on the eastside of North 1st Street approximately 500 feet southerly of Component Drive. The site is bounded by similar office and research and development uses to the north and south. A warehouse/distribution facility is located to the east of the site. A vacant lot, which has entitlements to develop up to 1.4 million square feet of office and research and development uses, is located to the west. The subject site is also located within the boundary of the North San José Area Development Policy (Rincon de los Esteros Redevelopment Area), which encompasses the area north of Highway 101 and south of Highway 237. The North San José Area Development Policy was established to allow development in the North San José industrial area under a special transportation level of service standard by stipulating maximum floor area ratios for development and other provisions.

Project Description

When completed, the subject site is proposed to house KNTV Channel 11 along with KSTS Channel 48, and KKPX Channel 65 which are now located at separate facilities. All administrative, general office, local newsgathering, off-air and on-air production, broadcasting and program distribution will be located on the project site. The proposed project consists of several building and site improvements. For reference, each project component is listed below with a brief description:

Building Alterations. Exterior building alterations would consist of seismic upgrades and raising the roof approximately 9 feet above the parapet, affecting approximately 9,800 square feet. The proposed modification will not increase the overall square footage of the existing building. The raised roof area is needed to provide adequate height over the proposed studio area for theatrical lighting, mechanical ducting, sprinklers, acoustical baffling and noise dampening material.

Satellite Dishes and Tower. The proposed broadcasting use will require the installation of seven ground mounted satellite dishes at the rear of the site. The proposed dishes range from approximately 3.5 feet to 24 feet in diameter. The project additionally proposes the construction of a 69-foot, self-supported microwave/communications antenna tower located along the northerly property boundary at the rear of the site. The proposed microwave/communications tower would be partially screened from public view by an existing line of tall trees along the front and northerly property lines.

Surface Parking Lot Alteration. The proposed project includes eliminating a total of 39 parking stalls, re-striping a portion of the existing surface parking lot and the removal of four non-ordinance size trees, measuring less than 56 inches in circumference. The proposed parking lot modification would accommodate the installation of the aforementioned (seven) ground mounted satellite dishes and news gathering vehicles consisting of: 7-8 vans, 2 satellite trucks, and 1 production truck in addition.

Emergency Back-up Generator. The project additionally proposes the installation of one 745 Hp Standby/Backup Emergency Generator and an associated 6,000 gallon above ground storage tank. The proposed generator and associated fuel tank would sustain essential broadcasting operations in the event of an interruption of electrical services from the distribution system or transmission grid due to circumstances beyond the operator's control. The proposed generator and above ground storage tank would be screened from view by an existing, masonry wall.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15301, "Existing Facilities" consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

GENERAL PLAN CONFORMANCE

The subject site is designated IP Industrial Park on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of IP Industrial Park in that television studios and antenna systems developed in conformance with the Zoning Ordinance and applicable City policy are considered an appropriate land use on industrial lands.

The General Plan currently allows properties in the North San José/Rincon de los Esteros Redevelopment Area to have a maximum building height of 90 feet. Consistent with the General Plan, the North San José Area Development Policy allows for a maximum height of 90 feet for industrial users if 65% of the net floor space is occupied by a single corporate user (KNTV NBC 11). Although the proposed building expansion would only increase the height of the existing building to 38 feet, the proposed microwave/communications antenna is proposed at 69 feet in height and is therefore consistent with the applicable General Plan Land Use Designation and Policies in regards to height.

ANALYSIS

The primary issues analyzed in this report include; 1) conformance to the IP- Industrial Park Zoning District, and 2) land use compatibility.

Conformance to the Zoning Ordinance

Development Standards:

The project meets the IP-Industrial Park requirements in terms of front setbacks for buildings (15-feet) and parking and circulation areas (25-foot). The zoning code allows for a zero side and rear setback for properties that are not located adjacent to properties planned for, or occupied by residential uses.

The Zoning Ordinance limits the maximum height in the IP Industrial Park Zoning District to 45 feet unless otherwise stated in the *San José 2020 General Plan* Urban Design Policies. As stated previously the General Plan allows a maximum height of 90 feet in the North San José Rincon de los Esteros Redevelopment Area and up to 120 feet for sites within 2,000 feet of an existing or planned light rail line. The subject site is located within the North San José Rincon de los Esteros Redevelopment Area and is located within 2,000 feet an existing light rail station (Karina Court Light Rail Station).

Minimum Parking Requirement:

As stipulated in the Zoning Ordinance, television and radio studios are required to provide a minimum of one parking stall per 250 square feet of space devoted to office use. The proposed project consists of approximately 45,365 square feet of occupied office area and would require a minimum of 182 parking stalls on site. The subject site currently provides a total of 270 parking stalls. Therefore, the proposed project would still meet the minimum parking requirement despite the elimination of 39 parking spaces to accommodate for the installation of seven ground-mounted satellite dishes.

Reconfiguring the surface parking lot to accommodate the proposed ground-mounted satellite dishes will additionally require the removal of four non-ordinance size trees, measuring less than 56 inches in circumference. The subject site is substantially landscaped with several redwood trees, which line the northerly property line, and along the North First Street frontage. Therefore, no additional landscaping is required as part of this permit.

Stand-by/Backup Generator:

Stand-by/backup electrical power generators are permitted in the IP Industrial Park Zoning District provided the proposal meets the specific criteria set forth in the Zoning Ordinance. The specific criteria includes; (1) that the proposed generator will not exceeding the maximum noise levels of the subject zoning district, (2) the generator meets the standards set forth by the Bay Area Air Quality Management District (BAAQMD) and (3) the operation of such generator shall not exceed a maximum time period of four consecutive months in any twelve month period.

The proposed generator would not exceed 70-decibel levels at the property line, consistent with the performance standards established for this development. Additionally, the applicant has provided sufficient evidence that the proposed generator would meet the air quality standards set forth by the BAAQMD and will be subject to conditions limiting the operation of such generator not to exceed a maximum time period of four consecutive months in any twelve-month period. Therefore, the proposed generator is consistent with the criteria set forth in the Zoning Ordinance.

The associated above ground storage tank is a permitted use in the IP Industrial Park Zoning District and will be fully screened by an existing masonry wall, which is architecturally compatible with the development.

Land Use Compatibility

The subject site is located in an established office and industrial area. The fact that the site is located in an existing industrial area and that the proposed 69 foot communications tower would be partially screened by the existing trees along the northerly and westerly property line, the proposed use and necessary site improvements would be compatible with the surrounding developments.

PUBLIC OUTREACH

Public hearing notices were distributed to area residents, tenants and owners of property within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public.

CONCLUSION

As discussed above, the project substantially conforms to the General Plan and North San José Area Development Policy. The proposed use is consistent with the requirements of the Zoning Code, is compatible with surrounding industrial uses.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of IP Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the IP Industrial Park Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The project conforms to the minimum setback requirements of 15 feet for buildings and 25 feet for parking and circulation areas from the front property lines and no rear or side setback as required in the IP Industrial Park zoning district.
5. The project does not reduce the existing on-site parking beyond the minimum required under Title 20 of the Municipal Code.
6. The existing office/research and development is well landscaped and maintained.
7. Landscaping, irrigation systems, walls and fences, features to conceal outdoor facilities and activities are sufficient to maintain or upgrade the appearance of the area in that:

- a. Substantial landscaping will be maintained on the site and an adequate automatic irrigation system will be provided to support this landscaping.
 - b. The Power Generation Facility and associated above ground storage tank will be enclosed to buffer adjacent uses.
 - c. Outdoor activities and facilities will be screened by walls or other devices compatible with the architectural treatment of the structure.
8. The project proposes permitting of a 69-foot tall communications antenna tower, a standby/back-up generator and an associated above ground fuel tank adjacent to an existing office/industrial building.
 9. The subject property has a height limit of 90 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and a Certificate of Permit has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the acceptance form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José -Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "NBC/KNTV 2450 North First Street, San José, California 95131," dated September 15, 2003, last revised on October 29, 2003, on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.

5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Utilities.** All new on-site telephone, electrical and other overhead service facilities shall be placed underground.
7. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
8. **Lighting.** Lighting shall conform to the Outdoor Lighting Policy.
9. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
10. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-03252) to the satisfaction of the Director of Public Works:
 - a. *Sewage Fees:* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. *Flood: Zone A0, Depths; Prior to issuance of Public Works Clearance:*
 - 1) Project must comply with the City's Substantial Improvement Policy for improvements to existing structures in a Special Flood Hazard Area.
 - 2) Submit a cost estimate of the proposed improvements and, if available, a document showing the market value of the existing structure.
 - 3) If the cost of the proposed improvements exceed 50% of the market value of the existing structure, it will be considered a substantial improvement and the entire structure must fully comply with City Floodplain Management requirements.
 - 4) The proposed satellite equipment must be elevated 1 foot above the existing grade or protected from flood damage.
11. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* The permit file number, CP03-058, shall be printed on all construction plans submitted to the Building Division.
 - b. *American Disabilities Act.* The applicant shall provide appropriate access as required by the American Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of Sa Jose Police Department.
12. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise specified in writing from the Fire

Department.

13. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
14. **Maximum Noise Levels.** The maximum noise level of the stand-by or backup electrical generator at the closest site property line contiguous to a property not controlled by the applicant shall not exceed the applicable noise standard of 55 decibels for residentially zoned properties, 60 decibels for commercially zoned properties, and 70 decibels for industrially zoned properties, as set forth in the Ordinance Number 26456.
15. **Bay Area Air Quality Management District Permit.** Applicant must operate the backup/standby generator in compliance with a Bay Area Air Quality Management District (BAAQMD) permit.
16. **Standby/Backup Generator Operation.**
 - a. *Generator Specifications.* The project shall use one new Caterpillar Diesel Model 3412/745 Hp stand-by/backup electrical power generation facility (generator) enclosed within an existing walled enclosure and the associated 6,000 gallon above ground fuel tank.
 - b. *Disturbance Coordinator.* Applicant shall post on the site the name and phone number for a disturbance coordinator who shall be available to answer questions and respond to complaints from the neighborhood.
 - c. *Emergency Power.* Testing of emergency power equipment shall be limited to weekdays between the hours of 8:30 a.m. to 4:30 p.m. and shall not exceed twenty-four (24) hours per year.
 - d. *Record of Operation.* The generator shall include a non-resettable totalizing counter to record all hours of operation. The applicant shall maintain an accurate record of the operation of the standby/back-up generator to the satisfaction of the Director of Planning of the City of San José and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
 - 1) Hours of operation for testing and maintenance.
 - 2) Dates and hours of operation for discretionary use in the event of a power failure.
 - 3) Operational problems, complaints, and difficulties.
 - 4) A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
 - 5) Dust and litter control efforts and results.
 - 6) Description of materials received, identified by source and material.
 - 7) The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours.

- e. *Exhaust Stack.* The generator shall be connected to an exhaust stack, which shall have an outlet at an elevation a minimum of fifteen (15) feet in height as measured from existing grade, and located no closer than fifty feet (50) feet to the nearest industrial property line and no closer than 1000 feet to the nearest residential property line.
- f. *C-ARB-Certified Ultra Low Sulfur Fuel.* Applicant shall use CARB-certified ultra low sulfur fuel to operate stand-by/backup electrical power generation facilities (generators).

17. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside.

18. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.